



Department of Budget and Management  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**

**NPM No. 44-2011**

29 December 2011

**MR. JONATHAN S. OCHE**  
*Division Director*  
**MINDANAO UNIVERSITY OF SCIENCE AND TECHNOLOGY**  
Lapasan, Cagayan de Oro City

**Re: Indemnification for BAC Members**

Dear Mr. Oche:

We refer to your letter dated 4 November 2011 inquiring on Section 73 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) and Section 4 of the Guidelines for Legal Assistance and Indemnification of Bids and Awards Committee (BAC) Members and BAC Support Staff<sup>1</sup> (Guidelines), in relation to the following issues:

1. Whether the judgment contemplated under Section 73 of the IRR is one that is final, non-appealable, and executory; and
2. Whether the Mindanao University of Science and Technology (University) can reimburse a Bids and Awards Committee (BAC) member for legal expenses incurred by reason of a BAC-related administrative case that was decided against the member but is still pending appeal.

**Final Judgment**

Pursuant to Section 73 of RA 9184 and its IRR, indemnification is afforded to the BAC members and/or BAC support staff for all reasonable fees, costs, and expenses incurred by such persons in connection with any administrative, civil or criminal action, suit or proceeding **to which they may be, or have been made**, a party, by reason of the lawful performance of their official functions and duties **unless they are finally adjudged** in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion, or otherwise held liable or guilty of the complaints or charges.

The phrase "finally adjudged" under Section 73 of the IRR, in so far as it relates to a process involving the courts, should be interpreted in the context of court proceedings. According to *Perez v. Zulueta*<sup>2</sup>, the word "final" may mean one on an issue of appealability, but it may mean another thing on the issue of conclusiveness or binding effect. A judgment will be deemed final or executory after the expiration of the time allowed by law for appeal

<sup>1</sup> GPPB Resolution No. 021-2005 dated 7 October 2005.

<sup>2</sup> 106 Phil. 264 [1959]

therefrom, or when appeal is perfected, after the judgment is rendered by the appellate court. On the other hand, "adjudge" means to pass on judicially, to decide, settle or decree, or to sentence or condemn, which implies a judicial determination of a fact, and the entry of a judgment.<sup>3</sup>

Simply put, a judgment that is final in character is one that "puts an end to the particular matter resolved or settles definitely the matter therein disposed of such that no further questions can come before the court except the execution of the order or judgment."<sup>4</sup>

Since Section 73 used the phrase "finally adjudged" in describing the judgment necessary for the application of the indemnification package, it is our considered opinion that the judgment contemplated therein is a final, non-appealable and executory judgment.

Meanwhile, pending final judgment, the BAC member may avail of the benefit of the indemnification package under Section 73 of the Guidelines.

### **Indemnification Pending Appeal**

Pursuant to Section 4.1 of the Guidelines, the procuring entity shall indemnify a BAC member and/or any BAC Support Staff who is a party to **a pending or completed action, suit or proceeding** whether civil, criminal or administrative in nature brought against him in the performance of his official functions.

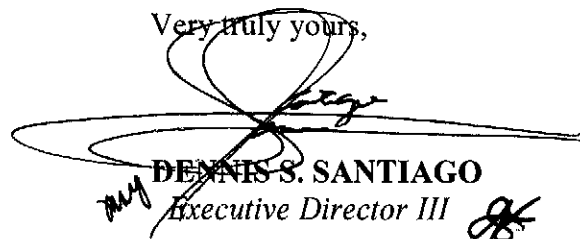
In this regard, the University can reimburse the BAC member for legal expenses incurred, provided the reimbursement or free legal assistance will comply with the rest of the general conditions and procedures found in Sections 4 and 5 of the Guidelines.

We wish to stress however, that in the event that the BAC member is finally adjudged guilty of the offense, the BAC member shall pay the cash advances through salary deductions or reimbursement. Otherwise, the BAC member shall liquidate his cash advances for the legal expenses incurred.<sup>5</sup>

We hope our advice sufficiently addresses your concerns. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented.

Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director III*

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<sup>3</sup> See *Biraogo v. The Philippine Truth Commission* of 2010, G.R. No. 192935 and *Rep. Edcel C. Lagman, et al. v. Exec. Sec. Ochoa and DBM Sec. Abad*, G.R. No. 193036, December 7, 2010.

<sup>4</sup> See *Republic v. Tacloban City Ice Plant, Inc.*, 258 SCRA 145 [1996].

<sup>5</sup> See Section. 5.5 of the Guidelines.